

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
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Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)
_____)

CC Docket No. 96-128

REPLY OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO
OPPOSITION TO APCC'S PETITION FOR CLARIFICATION
OR IN THE ALTERNATIVE RECONSIDERATION

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Pursuant to Section 1.106 of the Commission's Rules, 47 CFR § 1.106, the American Public Communications Council ("APCC") hereby submits its reply to the RBOC/GTE Payphone Coalition ("RBOCs") August 1, 1997 opposition to APCC's May 5, 1997 petition for further clarification or, in the alternative, for reconsideration of the Common Carrier Bureau's April 4, 1997 Clarification Order.¹ In their opposition, generally the RBOCs have avoided the merits of APCC's Petition. Instead, they employ

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-678, released April 4, 1997 (CCB) ("Clarification Order"). The Clarification Order clarified Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order"). The Payphone Order and Reconsideration Order and Clarification Order are referred to collectively herein as the Payphone Orders.

the same strategy that they have repeatedly used before the Bureau in the payphone proceedings (and the comparably efficient interconnection ("CEI") proceedings): confusing the issues; arguing issues not raised by APCC; and distorting the facts. The Bureau should not permit the RBOCs' tactics to sway the Bureau from *considering the merits* and granting APCC's Petition.

The RBOCs have the audacity to claim that through APCC's request for further clarification of the Clarification Order, APCC seeks to "sow confusion where clarity previously reigned." RBOC Opposition at 2. In fact, *the RBOCs* have sown loopholes into the Clarification Order so that they can escape the Commission's federal tariffing requirements and avoid the Commission's mandate to price payphone services in accordance with the Commission's new services test, as illustrated by the federal tariffing practices of U S West, BellSouth and NYNEX.

The issues raised by the U S West, BellSouth and NYNEX federal tariff filings involve interpretation of the Clarification Order. Thus, notwithstanding the RBOCs' claim, RBOC Opposition at 6, the Bureau needs to address head on in this proceeding the RBOCs' attempts to rewrite the Clarification Order, in addition to addressing in the CEI proceedings the CEI issues raised by the U S West, BellSouth and NYNEX federal tariff filings.²

² APCC's Petition stated that certain CEI issues related to the BellSouth tariff filing deficiencies should be addressed in the BellSouth CEI proceedings. APCC Petition at 7 n.12. The RBOCs claim this is a concession by APCC that any issue related to the U S West, BellSouth and NYNEX federal tariff filing deficiencies should be addressed in the CEI proceedings, RBOC Opposition at 5-6. However, APCC's Petition made clear that BellSouth's federal tariff filing deficiencies are just another example of the need for the
(Footnote continued)

The RBOCs want to avoid federally tariffing "unbundled," "payphone-specific services," such as call screening and call blocking features, because under the Payphone Orders, rates in federal tariffs must comply with the "new services" test. Reconsideration Order, ¶ 163 & n.492. Under the new services test, rates can only recover direct costs and a reasonable level of overhead costs.³ The rates that RBOCs have been charging for call screening and call blocking features at the state level are far, far in excess of costs. For example, U S West charges \$5.00 per line per month for Fraud Protection service in Montana (Montana Tariff, § 5.5.7.D.3.a.), even though, according to its own cost support, fraud protection costs only \$0.01 per line per month. BellSouth's cost for central office blocking and screening in South Carolina is only \$0.01 per line per month. Yet, BellSouth charges up to \$5.00 per line per month for its blocking and screening services.

In challenging the RBOCs' failure to federally tariff *payphone-specific* features that are *already unbundled* at the state level, APCC is trying to ensure that these services are available, at long last, at fair rates.

(Footnote continued)

Bureau to provide further guiding principles governing the LECs' federal tariffing obligations. APCC Petition at 7 n.12. U S West, BellSouth and NYNEX have attempted to fabricate restricted interpretations of the federal tariffing requirements explained in the Clarification Order. The Bureau must therefore correct these strained interpretations, in order to further clarify the federal tariffing obligations of not only U S West, BellSouth and NYNEX, but of all LECs.

³ Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524, ¶¶ 38-44 (1991).

I. "PAYPHONE-SPECIFIC" FEATURES

In defining the features⁴ that must be federally tariffed, the Bureau specifically referenced the Computer III Open Network Architecture ("ONA") regulatory framework:

We clarify here that the unbundled features and functions addressed in the [Payphone Orders] are network services similar to basic service elements ("BSEs") under the ONA regulatory framework. BSEs are defined as optional unbundled features that an enhanced services provider may require or find useful in configuring its enhanced service.

Clarification Order, ¶ 17 (citing Filing and Review of Open Network Architecture Plans, Phase I, Memorandum Opinion and Order, FCC 88-381, 4 FCC Rcd 1 (1988) (" BOC ONA Order")).

Therefore, the Bureau has already ruled that "payphone-specific" features include "features that [a PSP] may require or find useful in configuring its [payphone] service," and thus payphone-specific features are not limited to features offered exclusively, or even predominantly, to PSPs. The Bureau should grant APCC's request for clarification, and reiterate the Bureau's ruling with definitive clarity, in order to preclude further attempts by the RBOCs to create ambiguity in the Commission's federal tariffing requirements. The RBOCs claim that this clarification is unworkable, i.e., it would "sow confusion." However, the Commission has *already implemented* this standard in the ONA regulatory context.⁵ The standard is not confusing.

⁴ "Features and/or functions" will be referred to collectively herein as "features."

⁵ The standard for determining whether a feature is "payphone-specific" should be at least as inclusive, or even more inclusive, than the standard for determining whether a service element is a BSE. The RBOCs have historically dominated the payphone market (Footnote continued)

Indeed, there are a number of factors to determine whether a PSP may require or find a certain feature useful in configuring its payphone service, i.e., whether the feature is "payphone-specific," and not merely incidental to payphone service. For example, the percentage of PSPs subscribing to a LEC service feature is indicative of whether or not the feature is payphone-specific. If a majority of PSPs subscribe to the feature, then it is likely to be required or useful in configuring payphone service. As another example, if the percentage of PSPs subscribing to a LEC service feature is greater than the percentage of all LEC customers subscribing to the feature, then again, PSPs may require or find the feature useful in configuring payphone service.

The RBOCs claim that a feature is payphone-specific only if most or all LEC customers subscribing to the feature are PSPs. RBOC Opposition at 3-4 (claiming payphone-specific features must be "used predominantly by payphone service providers, over 70% of *all U S West customers* subscribing to CUSTOMNET are not PSPs, and therefore CUSTOMNET is not payphone-specific). The RBOCs' position is unreasonable. PSPs account for a relatively small percentage of all LEC customers. Although a predominant number of PSPs may subscribe to particular service features, there may be virtually *no* LEC service feature that is "used predominantly by PSPs" (except perhaps for the coin line features used by "dumb" payphones, which are not significantly used by most independent PSPs). Thus, PSPs will account for a relatively small percentage of *all*

(Footnote continued)

and impeded independent PSPs from offering new competition. In the RBOC ONA Order, by contrast, the Commission was implementing a regulatory framework that enabled RBOCs to enter the enhanced services market for the first time.

subscribers to LEC features, even though a large percentage of *all PSPs* in fact subscribe to the features.

The RBOCs' claim that payphone-specific features must be "used predominantly by payphone service providers" is not just unreasonable, it contradicts the Clarification Order, which in addition to call blocking and screening features, cites as "payphone-specific" a number of features that are commonly available to entities other than PSPs. For example, answer supervision is specifically cited as a payphone-specific feature, Clarification Order, ¶ 18, even though it is available to ESPs and other non-payphone subscribers. The Bureau also specifically cited IDDD blocking as a payphone-specific service. *Id.*, ¶ 18 n.49. The Commission recently required LECs to offer IDDD blocking to business customers, in addition to PSPs.⁶ The Bureau would not have cited answer supervision and IDDD blocking as payphone-specific services if it had intended to require federal tariffing of only services offered exclusively or predominantly to PSPs.

U S West's blocking and screening CUSTOMNET feature is certainly required or useful in configuring payphone service, *i.e.*, the feature is "payphone-specific." First, CUSTOMNET is critical to preventing fraud. Second, the RBOCs have not disputed APCC's understanding that CUSTOMNET permits PSPs to transmit the screening codes

⁶ Policy and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, 11 FCC Rcd 17021, 17027 (1996) (requiring "LECs to offer their federally tariffed international call blocking service on an unbundled basis to all business customers, aggregators and non-aggregators alike") (footnote omitted).

that allow IXC's to track payphone calls and to compensate PSPs on a per-call basis.⁷ See Reconsideration Order, ¶ 94 (requiring LECs to provide, and PSPs to transmit, screening codes which permit IXC's to track payphone calls). Thus, CUSTOMNET is needed by PSPs to establish eligibility for per-call compensation. Because of the particular importance of CUSTOMNET to PSPs, the real "mystery" is how the RBOCs can in good faith claim that CUSTOMNET is only incidental to payphone service.⁸

Finally, the RBOCs claim that APCC's requested clarification of the term "payphone-specific" is overly broad. They claim that APCC seeks to have features such as touchtone federally-tariffed as "payphone-specific" features because such features are useful to, or required by, PSPs. RBOC Opposition at 3. This characterization of APCC's Petition is false. As APCC clearly stated, "the Commission should clarify that

⁷ The other services identified by the RBOCs as federally tariffed by U S West -- "Billed Number Screening, Call Blocking for 10XXX1+/10XXX011+, and International Blocking" (RBOC Opposition at 4) -- *do not* transmit screening codes that will permit IXC's to track payphone calls and to compensate PSPs on a per-call basis, as required under the Payphone Orders (although these other services are clearly more than incidental to PSPs).

⁸ APCC is *not* addressing here the adequacy of screening codes currently provided to PSPs.

At the height of their cynicism for the Commission's attempts to stimulate competition, the RBOCs claim that APCC must seek to unbundle U S West's CUSTOMNET service under the ONA process, and demonstrate "'market demand, utility as perceived by [PSPs], and costing and technical feasibility.'" RBOC Opposition at 4-5 n.3. However, it has already been demonstrated that these criteria are met. According to the RBOCs, more than 70% of all U S West already customers subscribe to CUSTOMNET. Moreover, U S West already tariffs CUSTOMNET at the state level. Thus, there has been clear market demand for CUSTOMNET, and it has been clearly feasible for U S West to provide CUSTOMNET, and to cost it. The utility of CUSTOMNET service to PSPs is not in question, and even if it was in question, the current controversy demonstrates that PSPs perceive the utility of the service.

'payphone-specific' refers to services that are required or especially useful to PSPs in configuring their payphone service, see Clarification Order, ¶ 17 (citing BOC ONA Order), *unlike services such as touchtone service, that are only incidental to PSPs.*" APCC Petition at 8 (emphasis added). It is unlikely that the percentage of PSPs that subscribe to touchtone is significantly greater (if at all greater) than the percentage of all LEC customers that subscribe to touchtone. In other words, touchtone is not particularly required by, or more useful to, PSPs, compared to all LEC customers generally. Thus, as the Clarification Order explicitly makes clear, touchtone service is not payphone-specific; touchtone is only "incidental" to payphone service. Clarification Order, ¶ 18. In short, the RBOCs' claim that APCC's requested clarification would "over-expand" the term "payphone-specific" is disingenuous and without merit.

II. "UNBUNDLED" FEATURES

Once again, the RBOCs claim that APCC improperly seeks to require further unbundling of payphone features and functions. RBOC Opposition at 6-8.⁹ The RBOCs shamelessly mischaracterize APCC's Petition. *APCC is not seeking further unbundling in its Petition.* APCC merely requests the Commission to enforce the Payphone Orders, including the Bureau's own Order requiring the RBOCs to file federal tariffs for features that are *already* offered on an unbundled basis at the state level. Clarification Order, ¶ 18. Rather than addressing head on the merits of the definition of an "unbundled" feature, the

⁹ See also RBOC Coalition's Opposition to APCC's Consolidated Application for Review of CEI Orders at 3, 5.

RBOCs have yet again chosen to devote their opposition to, at best, disingenuous, and at worst, deceptive, pleading.

The Bureau needs to clarify the definition of an "unbundled" feature because the RBOCs have structured their tariffs in a way that they claim permits them to evade the Commission's federal tariffing requirements. According to the RBOCs, they can circumvent the federal tariffing requirements by setting up several different sets of service options that include or exclude particular features with basic payphone lines, and then claiming that the features are "bundled" because they are included in the price of a particular service option, when the same service minus the feature is also available.

For example, NYNEX's rate for "Basic Public Access Line (BPAL)" service, with "Outward Call Screening (OCS)," is \$17.72. NYNEX's New York Tariff, § 3.E.4. When NYNEX's "LIDPAL" fraud control service is added to, or (according to the RBOCs) "bundled" into, the *identical* BPAL service with OCS, NYNEX charges \$19.80. Thus, NYNEX charges \$2.08 more for the feature LIDPAL, when a PSP subscribes to it. Thus, LIDPAL is unbundled. NYNEX is required to federally tariff LIDPAL, and demonstrate that the \$2.08 rate complies with the new services test.

The RBOCs rely on "form over substance" reasoning: according to the RBOCs, if a LEC service feature is only provided with a basic payphone line, then the feature is "bundled," even if the identical basic payphone line is available without the feature at a different rate, and the feature *need not be taken* with the basic payphone line by subscribers. Under the RBOCs' reasoning, LECs would *never* have to federally tariff any

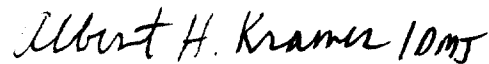
payphone services, if they simply structured their tariffs with a proliferation of different service options, building features into numerous basic payphone lines. Such an interpretation of the Commission's federal tariffing requirement would undermine the Commission's implementation of the Congressional directive to promote competition among PSPs and "promote the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276.

CONCLUSION

For the reasons set forth herein and in APCC's Petition, APCC's Petition should be granted.

Dated: August 15, 1997

Respectfully submitted,

Handwritten signature of Albert H. Kramer in cursive script.

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Certificate of Service

I hereby certify that on August 15, 1997, I caused a copy of the foregoing Reply to be sent by first class mail, postage prepaid, to:

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